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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,125	09/21/2000	Rob Tribble	NETS0044	1382
22862	7590	05/07/2004	EXAMINER	
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			FRENEL, VANEL	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/668,125

Applicant(s)

TRIBBLE, ROB

Examiner

Vanel Frenel

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The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-11,13-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-11,13-18,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### Notice to Applicant

1. This communication is in response to the Amendment filed 02/10/04. Claims 1, 8 and 15 have been amended. Claims 5, 12 and 19 have been canceled. Claims 1-4, 6-11, 13-18 and 20-21 are pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-11, 13-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisk et al (5,790,847) in view of Chacker (6,578,008), for substantially the same reasons given in the previous Office Action (Paper number 5). Further reasons appear hereinbelow.

(A) Claims 1, 8 and 15 have been amended to recite now "providing rule resolution strategy means for resolving conflicts between specific preferences of voters and determining a correct solution set; and a sequence of voters and an order of the votes included for each voter determine values in said solution set". Fisk discloses does not disclose such a feature. However, Chacker suggests providing rule resolution strategy means for resolving conflicts between specific preferences of voters and determining a

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correct solution set; and a sequence of voters and an order of the votes included for each voter determine values in said solution set (See Chacker, Col.7, lines 1-51).

One of ordinary skill in the art at the time of the invention would have found it obvious to incorporate the above features disclosed by Chacker within the system of Fisk with the motivation of providing a web site over global computer networks (e.g., the Internet) by a support entity (e.g., an online record business, modeling business, story-scripting business etc.) (See Chacker, Col.5, lines 16-31).

The remaining features of claims 1, 8 and 15 are rejected for the same reasons set forth in the previous Office Action (Paper number 5).

(B) Claims 2-4, 6-7, 9-11, 13-14, 16-18 and 20-21 have not been amended are rejected for the same reasons given in the previous Office Action (Paper number 5).

### ***Response to Arguments***

4. Applicant's arguments filed on 2/10/04 regarding claims 1, 8 and 15 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed on 02/10/04.

(A) At pages 2-9 of the 02/10/04, Applicant argues the followings:

(a) Chacker does not teach or disclose a system that provides resolution strategy means for resolving conflicts between specific preferences of voters and determining a correct solution set.

(b) Chacker makes no mention of a resolution strategy means for resolving conflicts between specific preferences of voters and determining a correct solution set.

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(c) Chacker does not teach or disclose wherein the sequence of voters and the order of the votes included for each voter determines the values in said solution set.

(d) Fisk and Chacker does not teach or disclose the invention as claimed.

(B) With respect to Applicant's first argument, Examiner respectfully submits that Chacker suggests that the consuming public can "rate an artist's band" or post a message about the artist/band) via the artist profile (see FIG. 6). Specific preferences of voters are reflected by each band's ratings. Chacker resolves these voter conflicts by assigning contracts to bands that are preferred (i.e. highest rated) by the voters. Therefore, Chacker teaches the claimed limitation and Applicant's arguments are nonpersuasive.

(C) With respect to Applicant first argument, Examiner respectfully submits that Chacker discloses that the more voters like a particular artist, the more likely they are to vote for the artist and the more likely they are to vote frequently for the artist. This reflects in the fluctuation of the share price for that artist. The more voters vote for a particular artist, the more the share price for an artist fluctuates. The share price of an artist reflect the numbers of shares for that voters submit for purchase and the number of shares purchased by a plurality of the voter. In addition, the increase in share price also reflects how often the factors listed above occur within a block of time. If a voter votes for an artist frequently and purchases large numbers of shares, the share price of that artist increases. In addition, voters have an incentive to vote frequently for an artist

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or group of artists. The system rewards volume traders (i.e. voters who purchase shares). Therefore, the above reflects the sequence of orders and an order of votes for each voter" which correspond to Applicant's claimed feature. Chacker teaches the claimed limitation and Applicant's arguments are nonpersuasive.

(D) Examiner respectfully suggests that obviousness is not determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F. 2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1992); *In re Piaseckii*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (See paper number 5). Note, for example, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specially support that particular motivation and /or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is not seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and

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scientific reasoning of one of ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, Ex parte Levengood, 28 USPQ2d 1300(Bd. Pat. App.& Inter., 4/22/93). Therefore, the combination of references is proper and the rejection is maintained.

In addition, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969). Therefore, Applicant's argument is not persuasive.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art teaches directory enabled policy management tool for intelligent traffic management (6,502,131) and system for customized electronic identification of desirable objects (6,029,195).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 703-305-4952. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9588. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

V.F  
V.F  
April 22, 2004

*Alexander Kamenov*  
ALEXANDER KAMENOV  
AU 3626  
Primary Examiner